

REMARKS

Claims 1-50 remain pending in the present application.

Applicants assume that the Examiner has withdrawn the previous rejections under 35 U.S.C. § 102(e) based upon U.S. Patent No. 6,587,744 (*Stoddard*).

In the present Office Action, the Examiner rejected claims 1-50 under 35 U.S.C. 101 as directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

Applicants respectfully assert that the Examiner has erred in rejecting claims 1-50 as non-statutory subject matter. The Examiner provided a broad assertion of all of the claims without specifically arguing the reasons why claims 1-50 have been found to be non-statutory subject matter. The Examiner merely asserted that the methods do not provide concrete, tangible and useful result, and further asserted that there is no final result and, therefore, there is no concrete, tangible and useful result to the method. *See* Section IV (C) 1(b) of the New Guidelines for 35 U.S.C. §101 of the Official Gazette Notice. However, the Examiner fails to address apparatus claims that are in the present invention. Further, the Examiner does not argue why the Examiner believes that concrete, tangible or useful results do not exist and no step of outputting a final result allegedly exists.

35 U.S.C. 101 recites that patentable subject matter includes useful process, machine, manufacture or composition or any new and useful method of improvement thereof. Claims of the present invention call for various novel, non-obvious processes, apparatuses, and/or systems. For example, claim 1 calls for performing a process step on a batch of workpieces and performing a tool state analysis on the processing tool used to perform the process. Claim 1 also

calls for performing a dynamic routing adjustment process that includes correlating the tool state analysis to the batch of workpieces and adjusting metrology routing based upon the correlation. These are specific, novel process steps that are patentable. A definite result and useful output is provided by the process described above. For example, the correlation of the tool state analysis with the batch of workpieces is used to adjust a metrology routing based upon the correlation, which is a clear, useful result of the method. Therefore, the Examiner has erred in rejecting the claims.

Further, the guidelines cited by the Examiner call for determining whether the claim indicates that it is directed to a practical application and the focus should be on the final result being achieved by the claimed invention as useful, tangible and concrete, and not on whether the steps taken to achieve a particular result are useful, tangible and concrete. *See* Section IV part (C)1(b) of the New Guidelines for 35 U.S.C. §101 of the Official Gazette Notice. Therefore, the focus should be whether the final result achieved by the claimed invention is useful, tangible and concrete. Clearly, the result of adjusting a metrology routing based upon the correlation of tool state analysis to a particular batch of workpieces is clearly a useful, tangible and concrete result. In fact, this result may be used, for example, to route certain workpieces for metrology analysis, which is clearly a useful, tangible and concrete step in a manufacturing environment. Therefore, in concert with the requirements of the guidelines provided in the Official Gazette, the methods described in claim 1 clearly meet the useful, tangible and concrete final result by the steps recited in the claim. Therefore, claim 1 of the present invention is statutory subject matter under 35 U.S.C. 101.

Similarly, claim 13 calls for adjusting the metrology routing based on the batches of workpieces, based on the correlation, which for at least the reasons described above, also provides a useful, tangible and concrete result. Further, claim 16 calls for means for performing a dynamic metrology routing adjustment process that includes adjusting metrology routing based upon correlating the tool state analysis to a batch of workpieces, which for at least the reasons described above, clearly provides a useful, tangible and concrete result. Further, independent claims 17 and 22 each call for a process controller that is capable of correlating tool state analysis to a batch of workpieces and adjusting the metrology routing based upon the correlation, which for at least the reasons cited above, provides a useful, tangible and concrete final result. Further, claim 26 calls for a computer readable program storage device that is capable of performing a dynamic metrology routing adjustment process that includes adjusting the metrology routing based upon a correlation of the tool state analysis to a batch of workpieces which, for at least the reasons cited above, clearly provides a useful, tangible and concrete final result. Therefore, independent claims 1, 13, 16, 17, 22, 26, 38, 42, 44, and 46 for method, process, apparatus and/or systems are capable of performing or are characterized by devices that provide a useful, tangible, concrete result.

Therefore, for at least the reasons cited above, independent claims 1, 13, 16, 17, 22, 26, 38, 42, 44, and 46 are allowable. Additionally, dependent claims 2-8, 14, 18, 20-21, 23, 25, 27-33, 39-41, 43, 45, and 47-50 which depend from independent claims 1, 13, 17, 22, 26, 38, 42, 44, and 46, respectively, are also allowable for at least the reasons cited above.

Further, in light of the arguments provided herein, all of the claims of the present invention are in conformity with the requirements of 35 USC §101. Further, all previously cited prior art, whether taken alone or in combination, do not teach, disclose or suggest all of the elements of claims of the present invention. *See*, for example, the arguments provided in the previous Response to the Office Action dated January 13, 2006, which is hereby incorporated by reference. Therefore, all of the claims of the present invention are allowable.

Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, a Notice of Allowance is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4069 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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